

## SENATE BILL NO. 44

INTRODUCED BY A. BISHOP

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ACCRUAL OF PENALTIES THAT MAY BE ASSESSED AFTER A WARRANT FOR DISTRRAINT HAS BEEN FILED; PROVIDING FOR UNIFORM PENALTY AND INTEREST FOR INDIVIDUAL INCOME TAXES, THE PUBLIC CONTRACTOR'S TAX, AND THE RETAIL TELECOMMUNICATIONS EXCISE TAX; AMENDING SECTIONS 15-1-701, 15-1-708, 15-30-209, 15-50-301, AND 15-53-147, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 15-1-701, MCA, is amended to read:

**"15-1-701. Warrant for distraint.** (1) A warrant for distraint is an order, under the official seal of the department of revenue or of the department of transportation, directed to a sheriff of a county of Montana or to an agent authorized by law to collect a tax. The order commands the recipient to levy upon and sell the real and personal property of a delinquent taxpayer.

(2) Upon filing the warrant as provided in 15-1-704, there is a lien against all real and personal property of the delinquent taxpayer located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, the department is a judgment lien creditor, and the department may collect delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced, except that the department may enforce the judgment lien at any time within 10 years of its creation or effective date, whichever is later.

(3) A warrant may be issued for the amount of unpaid tax plus accumulated penalty, if any, and accumulated interest. The lien is for the amount indicated on the warrant plus accrued penalty and interest from the date of the warrant. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

(4) The accelerated priority date provided for in (3) is not valid against purchasers, holders of security interests, judgment lien creditors, and those lienholders identified in Title 71, chapter 3, parts 3 through 15, whose interest is recorded prior to the filing of the warrant for distraint."

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2           **Section 2.** Section 15-1-708, MCA, is amended to read:

3           **"15-1-708. Release of lien.** (1) Upon payment in full of the unpaid tax plus accumulated penalty,  
4 if any, and accumulated interest, the department shall release the lien acquired by filing the warrant for  
5 distraint.

6           (2) Upon partial payment or whenever the department determines that a release or partial release  
7 of the lien will facilitate the collection of the unpaid tax, penalty, and interest, the department may release  
8 or may partially release the lien acquired by filing the warrant for distraint. The department may release  
9 the lien if it determines that the lien is unenforceable.

10           (3) (a) After making all reasonable efforts to collect unpaid taxes, penalties, and interest on the  
11 taxes and penalties, the department may determine a debt to be uncollectible. Upon determining that a  
12 debt is uncollectible, the department may transfer the debt to the department of administration for  
13 collection as provided in 17-4-104.

14           (b) Subject to approval by the department, reasonable fees or costs of collection incurred by the  
15 department of administration may be added to the amount of the debt, including added fees or costs. The  
16 debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this  
17 subsection. All money collected must be returned to the department to be applied to the debt, except that  
18 all fees or costs collected must be retained by the department of administration. If less than the full  
19 amount of the debt is collected, the department of administration shall retain only a proportionate share  
20 of the collection fees or costs."

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22           **Section 3.** Section 15-30-209, MCA, is amended to read:

23           **"15-30-209. Violations by employer -- penalties, interest, and remedies.** (1) The department shall,  
24 as provided in 15-1-216, add penalty and interest to the amount of all delinquent withholding taxes.

25           ~~(1)~~(2) The first time in any consecutive 3-year period that an employer files a report or remits a  
26 tax after the due date, the department shall issue a warning notice explaining to the employer that the  
27 employer failed to file a report on the due date as required by law and, if applicable, that the employer  
28 failed to remit the tax on the due date as required by law and the department shall notify the employer of  
29 the consequences of any further subsequent late reporting or late remittance.

30           ~~(2)~~(3) A late report penalty may not be assessed under 15-1-216 if an employer files the late

1 report prior to the issuance of a notice of delinquent report.

2 ~~(3)~~(4) A late payment penalty may be waived pursuant to 15-1-206 if an acceptable payment  
3 agreement is made between the department and the employer. An employer's failure to meet the terms  
4 of the payment agreement voids the waiver and the penalty must be recomputed from the due date on  
5 the unpaid tax.

6 ~~(4)~~(5) (a) A subpoena penalty of \$50 must be assessed whenever, as the result of a refusal of an  
7 employer to furnish wage information or pay taxes on time, the department issues a subpoena pursuant  
8 to 15-1-302, to obtain wage information or make a summary or jeopardy assessment pursuant to  
9 15-1-703.

10 (b) If an employer fails to honor the subpoena provided in subsection ~~(4)(a)~~ (5)(a), an additional  
11 \$100 penalty must be added to the liability.

12 ~~(5)~~(6) In addition to any other penalty provided by law, the failure of an employer to furnish a  
13 wage and tax statement as required by 15-30-207(1) subjects the employer to a penalty of \$5 for each  
14 failure with a minimum of \$50.

15 ~~(6)~~(7) Penalties may be waived by the department upon a showing of good cause by the employer.  
16 The penalty may be collected in the same manner as are other tax debts including a tax lien.

17 ~~(7)~~(8) If any tax imposed by this chapter or any portion of the tax is not paid when due, the  
18 department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date  
19 of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the  
20 warrant for distraint.

21 ~~(8)~~(9) The tax lien provided for in subsection ~~(7)~~ (8) is not valid against any third party owning an  
22 interest in the real or personal property whose interest is recorded prior to the filing of the warrant for  
23 distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all  
24 taxes, assessments, penalties, and interest due from the grantor have been paid.

25 ~~(9)~~(10) A grantor who signs and delivers to the third party an affidavit as provided in subsection  
26 ~~(8)~~ (9) is subject to the penalties imposed by 15-30-321(1) if any part of the affidavit is untrue. The  
27 department may bring an action as provided in 15-30-321(1) in the name of the state to recover the civil  
28 penalty and any delinquent taxes.

29 ~~(10)~~(11) All of the remedies available to the state for the administration, enforcement, and  
30 collection of income taxes are available and apply to the tax required to be deducted and withheld under

1 the provisions of 15-30-201 through 15-30-208 unless otherwise specifically addressed in this part."

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3 **Section 4.** Section 15-50-301, MCA, is amended to read:

4 **"15-50-301. ~~Rule~~ Rules for contractor's return --penalty.** (1) The department of revenue shall  
5 establish rules requiring public contractors to file a contractor's return showing public works contracts  
6 performed during a calendar year.

7 ~~(2) A person failing to file a contractor's license return as provided and required by the department~~  
8 ~~of revenue, upon conviction, shall be fined not less than \$1,000 or more than \$10,000."~~

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10 **Section 5.** Section 15-53-147, MCA, is amended to read:

11 **"15-53-147. Penalty and interest for delinquency -- waiver.** (1) Taxes due under this part become  
12 delinquent if not paid within 60 days after the end of each calendar quarter. The department shall add to  
13 the amount of all delinquent retail telecommunications excise taxes a penalty of 10% of the excise tax due  
14 plus and interest at the rate of 1% a month or fraction of a month, computed from the date on which the  
15 tax becomes delinquent to the date of payment, as provided in 15-1-216.

16 (2) ~~The 10% penalty~~ Penalty and interest, as provided in 15-1-216, may be waived by the  
17 department if reasonable cause for the failure to file the return, as required by 15-53-139, or to pay the  
18 tax due is provided to the department."

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20 NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2001.

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